

July 17, 2007

Memo to: Lee Rolfs  
Pete Ampe

From: Ron Theis

Subject: Items pending in RRCA Ad Hoc Legal Committee

This memorandum is written to follow up on the remarks made by Pam Andersen during the July 17, 2007 teleconference of the Ad Hoc Legal Committee regarding Nebraska's position on the two items pending in the Committee.

Item 1. Draft Resolution "concerning the permitting of new authorized diversion of water in one state that is proposed to be beneficially consumed in another state"

The Nebraska Department of Natural Resources is willing to seek the comments of the state in which the water will be beneficially consumed and consider all comments fully when deciding whether or not to issue a permit to transfer water out-of-state. However, NDNR cannot agree to give ultimate approval authority to the RRCA. This would be an unconstitutional delegation of NDNR's authority. Nebraska is willing to sign a memorandum of agreement outlining some procedures for improving communication and coordination between the states on permit applications which may impact another state's RRCA obligations.

Item 2. Evaporation from Non-federal Reservoirs Below Harlan County Lake

It is Nebraska's position that the plain language of Section VI.A of the Final Settlement Stipulation (FSS) answers the question "whether the Compact accounting includes evaporation from the Non-Federal Reservoirs below Harlan County Lake?" That section clearly states that the states shall calculate evaporation from Non-Federal Reservoirs that receive runoff from "above Harlan County Lake." It is Nebraska's position that the FSS is "the entire agreement among the parties" as expressed in Section IX, and, therefore, it is not necessary to consider other extrinsic evidence when interpreting it.

**Proposal on Splitting Harlan County Evaporation When Only One District Takes Irrigation Releases from Harlan County Reservoir Storage**

Kansas proposal of November 15, 2006

The RRCA Accounting Procedures and Reporting Requirements (AP's) do not include a procedure for use when only one District takes irrigation releases from HC storage during a calendar year.

As a result, the AP's Section IV.A.2.e.1 should be amended as follows:

*The total annual net evaporation (Acre-feet) will be charged to Kansas and Nebraska in proportion to the annual diversions made by the Kansas Bostwick Irrigation District and the Nebraska Bostwick Irrigation District during the time period each year when irrigation releases are being made from Harlan County Lake. For any year in which no irrigation releases were made from Harlan County Lake, the annual net evaporation charged to Kansas and Nebraska will be based on the average of the above calculation for the most recent three years in which irrigation releases from Harlan County Lake were made to both Districts.*

*For any year in which irrigation releases from Harlan County Lake were being made on behalf of only one of the Bostwick Districts, the net evaporation will be charged as follows:*

- *Evaporation from Harlan County Reservoir will be divided between the pool below the annual shut-off elevation, and the pool above said elevation based on the volume of water stored in each pool.*
- *Evaporation from the pool below the annual shut-off elevation will be charged 51.1% to Kansas and 48.9% to Nebraska.*
- *Evaporation from water stored above the annual shut-off elevation will be divided between the States in proportion to the annual diversions made by the Kansas Bostwick Irrigation District and the Nebraska Bostwick Irrigation District during the time period that year when irrigation releases are being made from Harlan County Lake.*

*In the event Nebraska chooses to substitute supply for the Superior Canal from Nebraska's allocation below Guide Rock in Water-Short Year Administration years, the amount of the substitute supply will be included in the calculation of the split as if it had been diverted to the Superior Canal at Guide Rock.*